



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,753	08/06/2001	Gregg Freishtat	46883/262503	9573

23370 7590 04/29/2004

JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA, GA 30309

EXAMINER

HARLE, JENNIFER I

ART UNIT	PAPER NUMBER
----------	--------------

3627

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/922,753

Examiner

Jennifer I. Harle

Applicant(s)

FREISHTAT ET AL.

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08/23/02</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-62 are pending. Claims 1-62 are subject to an election/restriction requirement. Group I, claims 1-18 and 60-62, was elected with traverse. Groups II-IV, claims 18-59, were not examined, as being drawn to the non-elected inventions.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-18 and 60-62, drawn to selling goods online via matching at least one sales associate with one customer, classified in class 705, subclass 26.
- II. Claims 19-33, drawn to matching online customers with online sales associates utilizing matching rules and profiles, classified in class 705, subclass 9.
- III. Claims 34-51, drawn to gathering sales information to determine the best practice profiles, classified in class 705, subclass 1.
- IV. Claims 52-59, drawn to registering and accrediting online sales associates, classified in class 705, subclass 11.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different functions and different effects, as set forth above.

Assuming arguendo, that they are subcombinations capable of use together, the examiner argues that they are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as the sale of goods, while invention II has the

Art Unit: 3627

utility of work-flow allocation, invention III has the utility of targeting advertising and/or inventory allocation, and invention IV has the utility of human resources application in hiring determinations and/or payroll determinations, i.e. commission allocations. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification and because of their recognized divergent subject matter and the search required for each Group is not required for the other, and restriction for examination purposes as indicated is proper.

During a telephone conversation with Michael J. Turton on March 18, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18 and 60-62. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-59 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3627

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13-18 and 60-62 rejected under 35 U.S.C. 103(a) as being unpatentable over Szlam, et al. (US 2002/0047859 A1) in view of Beck, et al. (6,170,011 B1).

Szlam discloses a method for selling goods and services in conjunction with the Internet ([0003]) comprising:

Receiving session information from an enterprise's website about a customer's session on the website, the session information comprising the products the customer is searching ([0003], [0012], [0015], [0017]-[0018], [0046], [0053]-[0072])

Determining from the session information and any customer information that the customer constitutes a sales opportunity appropriate for assistance from a sales associate (Figs. 2-7; [0053]-[0072]);

Matching the customer with at least one sales associate (Fig. 7; [0073]-[0074]);

Facilitating communication for a sales transaction between the customer and the matched sales associate via the internet (Fig. 7; [0073]-[0074] – Help screen has representative message “We have noticed that you have returned to this web page several times. Do you require assistance? If so, please type your question or the problem you are having and you will be immediately connected on-screen with a Customer Service Representative” – in response to returning to product screens, or similar message for remaining on an order screen);

Receiving sales information ([0074] and 0081] - Szlam discloses that the Customer Service Representative receives “sales information,” that is delivered to the customer as other appropriate messages forming the basis of the contact strategy or marketing campaign and is

Art Unit: 3627

implicitly a part of the ability to deliver a targeted presentation to the customer used by the CSR to provide enhanced and more personalized service);

Providing the session, customer, and sales information to the matched sales associated based on the particular sales opportunity with the customer (Szlam does not explicitly disclose that this information is provided to the CSR).

Szlam does not specifically disclose that the sales associate receives sales information, or is provided the session, customer and sales information based on the particular sales opportunity with the customer. Beck discloses a method and apparatus where agents are matched in “outbound campaigns” to contact customers via the Internet, where the agents are provided sales information, session information and customer information based upon a sales opportunity (cols. 3-4; cols. 7-12; col. 32). Beck additionally discloses that it is one of the more desirable goals that may be achieved in any multimedia communication center to maintain a state where all of the engaged agents, knowledge workers, other enterprise personnel are kept optimally busy at all times and that one method involves launching out-bound campaigns when monitoring of agent activity indicates that certain agents are not fully engaged, business is slow or agents’ skills are being under utilized (col. 4). Beck further discloses that due to the many new types of communication products supporting various media types available to businesses and customers including the keeping of contact histories, reporting statistics, creating routing rules, etc., it is desirable that interactions of all multimedia sorts be analyzed recorded and routed according to enterprise (business) rules in a manner that provides seamless integration between media types and application types, thereby allowing agents to respond intelligently and efficiently to customer queries and problems (cols. 3-4). Thus, it would have been obvious to one of ordinary

Art Unit: 3627

skill in the art at the time of the invention to have matched an agent with a customer and provided the agent with session, customer and sales information as taught in the method of Beck in Szlam for the express purposes set forth in Beck, i.e., facilitation of communication between the customer and agent resulting in better customer service and through the better service and communication facilitation of a sale, i.e. increasing profitability.

As per claim 2, Szlam discloses that customer information is received from the enterprise([0013]-[0014], [0046]-[0047] – log-on information, profile and stored information).

As per claim 3, Szlam discloses that customer information is received from a third party ([0014] – use of cookies to collect profile information, i.e. demographics, etc.).

As per claim 4, Szlam discloses that the session information is parsed (Figs. 1-7) and that the agent provided can be determined by rules so that the best available agent is provided [0085]. However, Szlam does not explicitly disclose that this segmentation is in accordance with product accreditation achieved by sales associates or that each sales associate is present with different types of sales opportunities depending on the product accreditation. Beck also discloses that routing to an agent is parsed and dependent upon enterprise rules such as an appropriate agent based upon skill ((col. 10). The examiner takes Official Notice that businesses use product accreditation, i.e. Real Estate License in a particular jurisdiction, Software Certification by the Provider, etc. to demonstrate that an employee is skilled in a particular product or series of products. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have parsed the session information in accordance with product accreditations and presented the sales associate with the appropriate type of sales opportunity depending upon the product accreditation, i.e. the best fit, as taught in Szlam and Beck because it provides the

Art Unit: 3627

enterprise with the best utilization of its resources, provides the customer with the most knowledgeable sales representative and increases the likelihood of a sale through customer satisfaction. Such best fit routing, funneling, is well-known in the call center art.

As per claims 5-7, Szlam does not specifically disclose whether the sales opportunities are determined from a single web site or a plurality of web sites and if it is a plurality of web sites whether the sales associates are employed by the enterprise or are independent of the enterprise. Beck discloses a distributed topology where a single communication center may span multiple physical locations, a segmented communication center where a single pool of agents services more than one company or customer base, or a wide communication network where a plurality of communication centers cooperatively service a common pool of customers of a customer base, i.e. all of the alternative set forth in claims 5-7 (col. 11). Beck additionally discloses these variations to be configured according to common object modeling dependent upon the type of enterprise situation, i.e. business rules and decisions of a particular industry or company (col. 11). Therefore, it would have been obvious to one of ordinary skill in the art to have utilized a single web site or a plurality of web sites to determine the sales opportunity as disclosed in Beck in Szlam, as it is an enterprise business decision based upon business rules as taught in Beck.

As per claims 8-10, Szlam discloses facilitating bridging out from Internet communication between the customer and sales associate to another mode of communication between the customer and sales associate ([0010] - CSR may communicate with the customer via various media including, but not limited to, electronic chat, e-mail, multi-media/presentation

Art Unit: 3627

form exchanges, voice over Internet Protocol (VoIP), voice over Public Switched Telephone Network (PSTN) and fax).

As per claim 11, Szlam does not explicitly teach that the bridged mode of communication occurs over a wireless communication network. The examiner takes Official Notice that Wi-Fi and the IEEE Wireless Standard 802.11 is an old and well-known way of connecting to the Internet utilizing a PDA or notebook without the use of plugging in to a modem. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the step of bridging communication over a wireless communication network in Szlam/Beck by using Wi-Fi/ the IEEE Wireless Standard 802.11 because the skilled artisan would have recognized that this practice is the wireless standard and allows customers to utilize a wide variety of wireless devices including PCs, notebooks, PDAs, etc. to connect to the Internet and buy goods thus broadening the availability of the agents to service customers and increase sales and profitability utilizing a standard industry protocol. These advantages are well known to those skilled in the art.

Claim 13 is rejected for the same reasons as claim 1.

As per claim 14, Szlam does not explicitly disclose that the sales information comprises product information, catalog information, and external information. Beck discloses that sales information is provided to the sales agent is determined based upon enterprise (business) rules and internal media layer provides information about the customer or contact, information about current or historical business processes, information about current interactions and their relationship to business processes, and a knowledge base to guide the agent (cols. 12; 37-38). However, these differences are only found in the nonfunctional descriptive material and are not

Art Unit: 3627

functionally involved in the steps recited. The receiving and providing steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 2'7 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to receive and provide sales information of any type to the sales associate because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per claim 15, Szlam does not explicitly disclose that some of the sales information is obtained from the enterprise. Beck discloses that some of the sales information is obtained from the enterprise (cols. 7-11; 37-38). Beck additionally discloses that the sales information provided to the agent is enterprise (business) rule dependent based upon the type of model designed and the situation (cols. 11-12). Therefore, it would have been obvious to one of ordinary skill in the art to have utilized information obtained from the some of the sale information obtained from the enterprise with the sales agent as disclosed in Beck in Szlam, as it is an enterprise business decision based upon business rules as taught in Beck.

As per claim 16, Szlam, does not disclose that some of the sales information is obtained from a third party. Beck discloses that some of the sales information is obtained from a third party (cols. 7-11; 37-38). Beck additionally discloses that the sales information provided to the agent is enterprise (business) rule dependent based upon the type of model designed and the

Art Unit: 3627

situation (cols. 11-12). Therefore, it would have been obvious to one of ordinary skill in the art to have utilized information obtained from the some of the sale information obtained from the third party with the sales agent as disclosed in Beck in Szlam, as it is an enterprise business decision based upon business rules as taught in Beck.

As per claim 17, Szlam does explicitly disclose that the sales information provided to the sales associate is pertinent to the sales opportunity based on the characteristics of the sales opportunity. Beck discloses that the sales information provided to the sales associate is pertinent to the sales opportunity based on the characteristics of the sales opportunity because it affords the sales agent the ability to begin mental preparation before taking the call (col. 9) and provides seamless integration between the multimedia and application type, thereby allowing agents to respond intelligently and efficiently to customers, as well as maximizing agent efficiency (cols. 3-4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized pertinent sales information with the sales agent as taught in Beck with the method of Szlam/Beck for the specific reasons set forth in Beck.

As per claim 18, Szlam does not teach that the sales information provided to the sales associate is associated with the results of a previous sales opportunity and there is a dynamic re-ranking of the aggregate sales information in terms of selling effectiveness which is incorporated in the sales information provided to a next sales associate presented with a similar opportunity. Beck teaches providing sales information to a sales associates associated with the results of a previous sales opportunity and there is a dynamic re-ranking of a previous sales opportunity in terms of selling effectiveness provided to the next sales associates incorporated into the sales information so that the interaction with the client can lead to a more productive interaction, i.e. a

• Art Unit: 3627

purchase (col. 32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the sales information associated with the results of a previous sales opportunity of Beck into the method of Szlam/Beck for the explicit reasons set forth in Beck.

Claims 60-62 are rejected for the same reasons set forth in claims 6 and 7.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szlam and Beck as applied to claim 1 above, and further in view of England (6,144,991).

As per claim 12, Szlam does not explicitly disclose that the sales associate has the capability to manipulate the customer's navigation of the Internet. Beck discloses that the agent may create and edit web form, embed controls into sub web-based forms or pages to provide certain customer interaction mechanism in addition to having a fully functional navigation tool at his disposal, i.e. the agent can manipulate the client's computer over the Internet. However, neither Szlam nor Beck disclose that the sales associate has the capability to manipulate the customer's navigation of the Internet. England, discloses that the salesperson can show the client Web pages and or/ Internet Resources such as a product in an electronic catalog and that the salesperson can then immediately take the client to a Web page to purchase the item (col. 14, lines 1-14). England additionally discloses that the sales person and client can engage in a collaborative conference to further facilitate the exchange of information (col. 14, lines 1-14). England further discloses that people searching for information on a business web site to place an order often require personal assistance to find the desired product, that if they have to wait they will often go to a competitor's web site and that many web sites are complicated to navigate requiring a practical technique for providing a user with a mechanism to minimize the

Art Unit: 3627

frustration, i.e. an interactive guide/agent interconnection (cols. 6-8). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized a salesperson's ability to manipulate the customer's navigation of the Internet as taught in England in the method of Szlam/Beck for the explicit reasons set forth in England.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Costigan, et al. (US 2002/0083167 A1) discloses a communications system and method which enables representatives of a marketing party to initiate private, on-on-one communications with potential buyers.

Anismiov, et al. (6,449,358 B1) discloses a method for predicting and managing call load by determining the optimum frequency of outbound call generation during an outbound calling campaign from a call center.

Gisby, et al. (6,044,146) discloses a method and apparatus for call distribution and override with priority.

In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, and because "the continual, chief complaint of inventors and their lawyers: that patent examiners are abysmal communicators, both orally and in writing,"¹ the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicant(s) with notice—for due process purposes—of his position regarding his factual

¹ Sabra Chartrand, *A Bid to Overcome Patent Backlogs*, 152 N.Y. Times C2 (Sept. 23, 2002).

• Art Unit: 3627

determinations and legal conclusions. If Applicant(s) disagree with *any* factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,² the Examiner respectfully requests Applicant(s) *in their next response* to expressly traverse the Examiner's position and provide appropriate arguments in support thereof. Failure by Applicant(s) *in their next response* to traverse the Examiner's positions and provide appropriate arguments in support thereof will be considered an admission by Applicant(s) of the factual determinations and legal conclusion not expressly traversed.³ By addressing these issues now, matters where the Examiner and Applicant(s) agree can be eliminated allowing the Examiner and Applicant(s) to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer I. Harle whose telephone number is 703.306.2906. The examiner can normally be reached on Monday through Thursday, 6:30 am to 5:00 pm,.

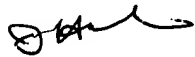
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703.308.5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

² E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.

³ See also MPEP §714.02, 37 CFR §1.111(b), and 37 CFR §1.104(c)(3).

• Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Ione Harle
March 20, 2004